
(2010) 02 GAU CK 0086
In the Gauhati High Court
Case No : MAC Appeal No. 213 of 2004

The National Insurance Company Ltd.	APPELLANT
Vs	
Smt. Bimala Dey and Others	RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 142
Motor Vehicles Act, 1988 — Section 147, 147(1), 173

Citation : (2011) ACJ 1984 : (2010) 2 GLD 440 : (2011) 2 GLR 325 : (2010) 2 GLT 930 : (2011) 2 TAC 608

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : B.C. Das, S. Roy and R.C. Paul, for the Appellant; HRA Choudhury S.K. Jain, B.K. Jain, B. Islam and N. Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988, is at the instance of the Insurance Company. The appellant is challenging the Award dated 24.6.2004, passed by the learned Member, Motor Accident Claims Tribunal, Guwahati, Kamrup, in MAC Case No. 1388 of 2002, whereby the learned Tribunal has awarded a sum of Rs. 4,60,000/with interest @ 9% per annum from the date of filing of the claim petition. At the same time, the Tribunal has fastened the entire liability upon the Insurance Company to satisfy the Award and has totally absolved the owner of the offending motor vehicle.

2. Heard Sri B C Das, learned senior counsel for the appellant. Also heard Sri HRA Choudhury, learned senior counsel for the owner of the offending vehicle (respondent No. 6) as well as Sri S K Jain, learned Counsel for the claimants/respondent Nos. 1 to 5. I have also perused the impugned judgment.

3. Sri Das, learned senior counsel for the appellant submitted that the direction of the Tribunal that the Insurance Company should satisfy the Award is perverse and contrary to the provisions of law. According to the learned Counsel, the

deceased was travelling in a goods carriage vehicle and as such, the risk of such gratuitous passenger was not covered by the policy. In such a situation, as contended by the learned Counsel, the owner of the vehicle should satisfy the Award.

4. On the other hand, the learned Counsel for the claimants and the owner of the vehicle submitted that in the light of the judgment of the Hon'ble Supreme Court rendered in the case of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and the case of United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, the Insurance Company may be directed to satisfy the Award at the first instance and thereafter, the Insurance Company may recover the amount from the owner of the vehicle.

5. As noted earlier, the limited prayer of the appellant is to absolve it from the liability on the ground that the deceased was a gratuitous passenger.

6. I find from the impugned judgment that the Tribunal has given a categorical finding that the deceased was travelling in a goods vehicle (Pick-up van) as a gratuitous passenger. There is no evidence on record that the deceased was travelling in the goods vehicle either as the owner of the goods or as his representative. In other words, the claimants' case was that the deceased was travelling in the vehicle to purchase vegetables and suddenly it dashed a stationary truck, resulting into the death of the claimants' husband/father.

7. In this way, the limited question to be examined by me is whether the policy covers the risk of gratuitous passenger and if not, whether the Insurance Company can be directed to satisfy the Award at the first instance.

8. The law regarding the liability of the Insurance Company with respect to gratuitous passenger even after 1994 amendment of the Motor Vehicles Act, 1988, has been laid down by the Hon'ble Supreme Court in the case of New India Assurance Company Ltd. v. Asha Rani reported in (2003) 2 SCC 223 and in the case of Baljit Kaur (supra). In both these cases, it has been held that the liability of a gratuitous passenger is not covered u/s 147(1)(b)(i) of the Motor Vehicles Act, 1988. Relevant observations of the Apex Court given in the case of Baljit Kaur (supra) are reproduced below:

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit insurance to such category of people.

9. In view of the legal position of Section 147(1)(b)(i) of the M.V Act, 1988 laid

down by the Apex Court I do not feel it necessary to dwell upon this issue any further. In other words, since the deceased was a gratuitous passenger in a goods vehicle his life was not covered by the insurance policy taken by the owner of the vehicle.

10. Now, the question is whether the Insurance Company can be directed to satisfy the award at the first instance. In the case of Baljit Kaur, after affirming the law of gratuitous passenger, propounded in the case of Asha Rani and more particularly, the intention of the legislature to amend Section 147, the Hon"ble Supreme Court directed the Insurance Company to satisfy the Award at the first instance and to recover the same from the owner of the vehicle on the principle of equity and also keeping in view the fact that the law in this regard was not clear till then. In my considered opinion, the aforesaid direction to the Insurance Company was given in exercise of powers conferred under Article 142 of the Constitution of India and it cannot be construed as laying down a law under Article 141.

11. Similarly, the judgment rendered in the case of Suresh K V (supra), the Insurance Company was directed to satisfy the Award at the first instance with a view to do complete justice after opining that the claimant being a collie worker may not be in a position to recover the dues from the owner of the vehicle. In this way, the directions are essentially under Article 142 of the Constitution of India and on the peculiar facts of the case. On the other hand, the learned Counsel for the appellant cited the judgment of the Hon"ble Supreme Court given in the case of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, and also the judgment rendered in the case of National Insurance Co. Ltd. Vs. Prema Devi and Others, . In these cases, after holding that the Insurance Company had no liability to pay compensation, as the deceased were gratuitous passengers, the Apex Court allowed the claimants to recover the amount from the owners of offending vehicle.

12. In my considered opinion, even after holding that the offending vehicle was duly insured it may be difficult to direct the Insurance Company to satisfy the Award at the first instance and then realise the amount from the owner. In certain cases, the Insurance Company may plead breach of policy conditions by the owner of offending vehicle or its driver and in some cases, the Insurance Companies may plead that the risk of the injured/deceased was totally out of policy coverage. In the former/first category cases, a direction to satisfy the Award at the first instance may be given keeping in mind the status of the claimants, however, it would not be advisable to give any such direction in the later/second category cases. The reason behind making this distinction is that in the first category cases the injured or deceased may not have the requisite knowledge about violation of policy conditions by the owner of vehicle or its driver. For instance, a passenger may not be knowing facts like invalid driving license of driver, non-payment of road tax, deviation from the permitted route allotted to the owner, number of passengers allowed to be carried in the vehicle

etc. Non- coverage of the risk of injured/deceased under relevant insurance policy would fall under second category cases. As mentioned earlier, if it is a case of expiration of policy period or lapse of policy then such a case may also be taken in the first category. However, under no circumstance a gratuitous passenger can be treated alike since such passenger boards a vehicle either without hiring vehicle or travels in a vehicle, which is not authorised to carry passengers. These circumstances are fully within the knowledge of the victim and, as such, he or she cannot claim the benefit of beneficial interpretation of law. Besides this, it is also not advisable to route the payment of compensation through the Insurance Company in those cases where the owner has contested the case, as it would lead to multiplicity of the proceeding.

13. In the result, the appeal stands allowed to the extent that the Award is to be satisfied by the owner of the offending vehicle and not by the Insurance Company. As could be gathered from the record, the Insurance Company has deposited 50% of the Award money in the Registry of the High Court and the said amount has already been disbursed to the claimants. Hence, the Insurance Company is allowed to recover the said amount from the owner of the vehicle.

14. With the aforesaid observations, this appeal stands allowed.